

## Message Text

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C O N F I D E N T I A L STATE 196803 TOSEC 200160

EXDIS-ATTACHMENT FOR AM RE GREEK LEGAL DOCUMENT AND SISMIL

FOLLOWING REPEAT ATHENS 7815 ACTION SECSTATE INFO

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QUOTE C O N F I D E N T I A L ATHENS 7815

EXDIS

E.O. 11652: GDS

TAGS: PFOR, PLOS, GR, TU

SUBJECT: TURKISH SEISMIC VESSEL: GREEK LEGAL DOCUMENT

REF: ATHENS 7814

1. THIS TELEGRAM CONTAINS THE TEXT OF THE DOCUMENT PRIME  
MINISTER CARAMANLIS GIVE ME YESTERDAY, SETTING FORTH A  
LEGAL OPINION CONCERNING SEISMIC RESEARCH IN THE AEGEAN.  
(WHILE THE LANGUAGE AND ARGUMENTS CONTAINED IN THIS  
DOCUMENT MAY BE REFERRED TO ON A CLASSIFIED AND RE-  
STRICTED BASIS IF APPROPRIATE, THE FACT THAT WE HAVE  
THE FULL TEXT AND THAT THE DOCUMENT ITSELF WAS GIVEN  
TO ME PERSONALLY BY CARAMANLIS SHOULD NOT BE REVEALED.)  
CARAMANLIS DID NOT KNOW FULL DETAILS CONCERNING THE  
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AUTHORS OF THE DOCUMENT, BUT HE SAID THEY WERE WELL-

KNOWN "AMERICAN INTERNATIONAL LAWYERS" AND THAT THEIR NAMES WERE MACDOUGAL AND NEIL.

2. BEGIN TEXT OF DOCUMENT:

(1) ARTICLE 2 OF THE GENEVA CONVENTION RECOGNIZES THE ((SOVEREIGN RIGHTS)) OF A COASTAL STATE OVER THE CONTINENTAL SHELF FOR THE ((PURPOSES OF EXPLORING AND EXPLOITING ITS NATURAL RESOURCES)). ARTICLE 2 HAS BEEN HELD BY THE INTERNATIONAL COURT TO BE CUSTOMARY LAW, BINDING NON-SIGNATORIES. ARTICLE 5 (8) OF THE CONVENTION IS NO MORE THAN A PROCEDURAL ILLUMINATION AND MAY BE DEEMED TO BE INCLUDED IN ARTICLE 2. THE TURKISH FOREIGN MINISTER MAKES CLEAR THAT THE PURPOSE OF THEIR RESEARCH IS TO LOCATE RESOURCES. FULLY APART FROM ARTICLE 5 (8) ((THE CONSENT OF A STATE WITH SOVEREIGN RIGHTS OVER A CONTINENTAL SHELF MUST BE REQUIRED FOR EXPLORATION OF THAT SHELF)). ANY EXPLORATION CONCERNING NATURAL RESOURCES AND ANY RESEARCH UNDERTAKEN BY TURKEY, WITHOUT GREEK PERMISSION, OF THE SHELF IS MOST PLAINLY A VIOLATION OF GREEK SOVEREIGN RIGHTS IN THE SHELF IN VIOLATION OF ARTICLE 2 (2) OF THE GENEVA CONVENTION.

(2) TURKEY CANNOT PERSUASIVELY MAINTAIN THAT SEISMIC RESEARCH IS PURELY SCIENTIFIC AND HENCE PERMISSIBLE, EVEN WITHOUT GREEK PERMISSION. THE VIOLATION OF SOVEREIGN RIGHTS VOUCHSAFED IN THE CONVENTION DOES NOT DEPEND UPON THE MODALITY USED, BUT UPON THE PURPOSES FOR CONDUCTING THE RESEARCH, AND ITS EFFECTS. IF IT RELATES TO NATURAL RESOURCES, IT IS WITHIN THE EXCLUSIVE SOVEREIGN RIGHTS OF GREECE. THE TURKISH FOREIGN MINISTER MAKES CLEAR THAT THE DESIRED OUTCOME IS FOR LOCATION OF RESOURCES OF THE SHELF.

(3) SCIENTIFIC DISTINCTIONS BETWEEN SEISMIC OR SONAR RESEARCH AND RESEARCH METHODS TOUCHING OR PENETRATING THE SURFACE OF THE SHELF ARE NOT CONCLUSIVE IN INTERPRETING THE NORMS OF THE CONVENTION. ANY METHOD, THE OUTCOME OF WHICH IS TO INFRINGE THE COASTAL STATE'S SOVEREIGN RIGHTS TO EXPLORE AND EXPLOIT THE NATURAL RESOURCES OF ITS SHELF IS IN VIOLATION.

(4) ARTICLE 5 (8) IS NO MORE THAN A DETAILED ILLUM-  
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INATION OF RIGHTS THAT ADHERE IN SOVEREIGNTY UNDER ARTICLES 1 AND 2 OF THE CONVENTION. THESE ARTICLES HAVE BEEN AUTHORITATIVELY HELD TO HAVE BECOME CUSTOMARY INTERNATIONAL LAW, BINDING, ERGA OMNES. HENCE TURKEY IS BOUND TO RESPECT GREECE'S SOVEREIGNTY, WHOLLY APART FROM ARTICLES 5 (8).

(5) AS WE SHOW IN DETAIL IN OUR OPINION OF AUGUST 10, 1974, IN THE ABSENCE OF AGREEMENT OR THIRD PARTY

DETERMINATION, A MEDIAN OR EQUIDISTANT LINE DELIMITS THE CONTINENTAL SHELF OF 2 STATES (SEE PAGES 33-73). HENCE, THERE IS NO LEGAL FOUNDATION FOR TURKEY'S CONTENTION THAT GREECE ENJOYS NO RIGHTS IN THIS AREA. ON THE CONTRARY, GREECE ENJOYS FULL RIGHTS ON ITS HALF OF THE MEDIAN OR EQUIDISTANT LINE, AS EXPLAINED IN OUR OPINION. THE TURKISH FOREIGN MINISTER MAKES IT CLEAR THAT HE REJECTS THIS VIEW OF THE RELEVANT LAW.

(6) GREEK RIGHTS WOULD NOT, REPEAT NOT, BE ADEQUATELY SAFEGUARDED IF IT NOW CONTENTED ITSELF WITH A STATEMENT THAT THE TURKISH RESEARCH ON THE GREEK SHELF DOES NOT PREJUDICE ITS RIGHTS. WHATEVER THE PURPORT OF THE STATEMENT, THE HARSH FACT REMAINS THAT SOVEREIGN RIGHTS WILL HAVE BEEN WAIVED IN FAVOR OF A COMPETING STATE. THE TURKISH FOREIGN MINISTER IS ASSERTING THAT GREECE HAS NO SOVEREIGN RIGHTS BEYOND THE TERRITORIAL SEA.

(7) IN OUR VIEW, GREEK RIGHTS WOULD BE PREJUDICED BY A UNILATERAL TURKISH STATEMENT EVEN WITH PRIOR AGREEMENT, ASSERTING RESERVATION OF THE RIGHTS OF EACH PARTY. THERE IS NO CONTEXT OF AGREEMENT TO ABIDE BY THE LAW. THE TURKISH GOVERNMENT IS HOPING THAT THE LAW WILL BE CHANGED. IN VIEW OF OUR ANSWERS TO QUESTIONS 6 AND 7, WE THINK THAT TURKISH ACTIVITIES ON THE GREEK SHELF ARE ACTIONABLE AT THE INTERNATIONAL COURT OF JUSTICE, ASSUMING JURISDICTION, AND WOULD, MOREOVER, APPEAR TO FALL UNDER THE JURISDICTIONAL AMBIT DISCUSSED IN OUR MEMORANDUM OF JULY 20, 1976. WITH RESPECT TO A REQUEST FOR THE INVOCATION OF INTERIM MEASURES, THE QUESTION OF WHETHER THERE IS IRREPARABLE DAMAGE, MAY REQUIRE SOME STUDY. WE WOULD REFER IN THIS RESPECT TO OUR RECENT MEMORANDUM TO YOU. CONFIDENTIAL

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(8) YOUR FINAL UNNUMBERED QUESTION ASKS IF ARTICLE 2 PRESUPPOSES PHYSICAL RESEARCH, AS OPPOSED TO SEISMIC, OR SONAR, RESEARCH. THE INTERPRETATION, BASED ON THE FRENCH WORD//TOUCHANT// IS QUITE FORCED, AND IS PLAINLY REJECTED BY THE REST OF THE TEXT, BY CURRENT STATE EXPECTATIONS, AND BY COMMON SENSE. IT IS NOT THE MEANS OR MODALITY BY WHICH EXPLORATION IS CONDUCTED, BUT THE FACT THAT EXPLORATION OF THAT SHELF RESOURCE IS BEING CONDUCTED IN VIOLATION OF THAT COASTAL STATE'S SOVEREIGN RIGHTS. HOWEVER IT IS TRANSLATED, ARTICLE 5 (8) IS EXPLICIT IN DENYING A RIGHT TO SCIENTIFIC RESEARCH ABOVE THE CONTINENTAL SHELF, WITHOUT THE CONSENT OF THE COASTAL STATE. END TEXT OF DOCUMENT

3. COMMENT: I RECOGNIZE THAT WE HAVE TRIED TO

AVOID TAKING A LEGAL POSITION ON SOME OF THE QUESTIONS  
ADDRESSED IN THE FOREGOING DOCUMENT. HOWEVER, I RECOM-  
MEND THAT WE RECONSIDER THIS POSITION OF OURS. IN  
ANY CASE, IT SEEMS TO ME SOME MEANS MUST BE FOUND OF  
DEALING WITH THE GREEK VIEW THAT THE LAW IS SO OVER-  
WHELMINGLY ON THEIR SIDE IN THEIR DISPUTES WITH  
TURKEY IN THE AEGEAN. IF THE DEPARTMENT DOES NOT  
BELIEVE WE SHOULD ENDEAVOR TO WORK OUT A FULLY DEVEL-  
OPED LEGAL POSITION ON THESE QUESTIONS, PERHAPS SOME  
KIND OF ABBREVIATED AIDE-MEMOIRE, DEALING WITH THE  
1958 CONTINENTAL SHELF CONVENTION, COULD BE PREPARED  
WHICH COULD BE GIVEN TO JOHN TZOUNIS AT THE FOREIGN  
MINISTRY HERE IN ATHENS, SINCE HE APPEARS TO BE COOR-  
DINATING ALL LEGAL OPINIONS AND ANALYSIS ON THIS SUB-  
JECT THAT ARE BEING CONSIDERED BY THE GREEK GOVERNMENT.  
SHOULD WE DECIDE TO PRESENT SUCH AN AIDE-MEMOIRE, IT  
COULD BE DRAFTED IN SUCH A WAY AS TO MAKE CLEAR--  
SHOULD IT BY ANY CHANCE EVER BECOME PUBLIC--THAT WE  
WERE NOT TAKING SIDES IN THE GREEK-TURKISH DISPUTE,  
BUT MERELY POINTING OUT THE LACK OF CLARITY AND THE  
SEVERAL MAJOR LEGAL AMBIGUITIES THAT SURROUND CONTINENTAL  
SHELF ISSUES.  
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